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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/584,688

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Erik Dumont

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09/04/2009

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EXAMINER

FLORY, CHRISTOPHER A

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

09/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/584,688	Applicant(s) DUMONT ET AL.	
	Examiner CHRISTOPHER A. FLORY	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-16 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see section I on page 7, filed 4 May 2009, with respect to the objection to the Specification have been fully considered and are persuasive. The objection to the Specification has been withdrawn.
2. Applicant's arguments, see sections III and IV, filed 4 May 2009, with respect to the rejection of claims 1-12 under §101 and §112, second paragraph have been fully considered and are persuasive. The §101 and §112 rejections of claims 1-12 have been withdrawn.
3. Applicant's arguments, see pages 9-10, filed 4 May 2009, with respect to the rejection of claims 1-20 under §102(b) as anticipated by Morris'261 have been fully considered and are persuasive, inasmuch as Morris'261 does not expressly disclose changing a phase of the stimulation voltage. However, it is also noted that Morris'261 is still considered to expressly and explicitly disclose each and every other limitation of the pending claims, and that a changeable phase parameter of a signal is amply well known in the field and art, e.g. as expressly taught by both Johnson'627 and Deng'251. Nonetheless, for the sake of expediting prosecution, the §102(b) rejection of claims 1-20 using Morris'261 has been withdrawn.
4. Applicant's remaining arguments filed 4 May 2009 have been fully considered but they are not persuasive. Claims 1, 3-16 and 18-20 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Johnson'627. Claims 1, 3-16 and 18-20 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated Deng'251.

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5. Regarding Johnson'627, Applicant argues that the reference does not teach use of hyperthermia. However, Johnson'627 clearly and explicitly discloses hyperthermia, i.e. heating of tissue, in paragraphs [92], [98], [110], [112], [116] and [120—[124].

Further, the recitation of hyperthermia need not be given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Applicant further argues that Johnson'627 does not recite adjusting parameters of voltage and phase. However, Johnson'627 very clearly and explicitly recites these limitations in paragraphs [51], [53], [120], [121] and claims 43 and 44.

6. Regarding Deng'251, Applicant argues that Deng'251 discloses antennas rather than electrodes. However, Deng'251 discloses that the antenna structures are responsible for generating an electrical leak current in column 5, line 55 through column 6, line 5 such that the antenna structures referenced by Applicant clearly emit an electrical current and therefore can very reasonably be interpreted as electrodes.

Claim Objections

7. Claim 8 remains objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 3-16 and 18-20 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Johnson et al (US 2002/0077627, hereinafter Johnson'627).

Particular emphasis is placed on the title; abstract; paragraphs [49], [51], [53], [63], [116]; and Figures 3-5 with related paragraphs. Specifically regarding the limitations of adjustable amplitude and phase, particular emphasis is placed on paragraphs [51], [53], [120], [121] and claims 43 and 44. Regarding the limitation of localized hyperthermia, although said limitation be contained only in the preamble and is not given weight for the sufficiency of structure contained in the body of the claim, Johnson'627 very explicitly discloses hyperthermia, i.e. heating of tissue, in paragraphs [92], [98], [110], [112], [116], and [120]-[124]).

10. Claims 1, 3-16 and 18-20 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Deng (US 6,347,251, hereinafter Deng'251).

Particular emphasis is placed on the title; abstract; and Figures 1, 2, 5 and 6 with related paragraphs. Deng'251 specifically discloses that the antenna structures are a source of electric current in column 5, line 55 through column 6, line 5 and therefore are reasonably interpreted as electrodes. Specifically regarding the limitations of adjustable amplitude and phase, particular emphasis is placed on the abstract; column 1, lines 30-37; column 3, lines 54-59; and column 5, lines 36-54.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher A. Flory whose telephone number is (571) 272-6820. The examiner can normally be reached on M - F 8:30 a.m. to 5:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Christopher A. Flory/

4 September 2009

/George Manuel/
Primary Examiner